

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

**BRIEF AND APPENDIX
FOR APPELLANT**

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

APRIL TERM, 1941.

778
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

FILED MAY 15 1941

NO. 7879—Special Calendar

Joseph R. Steiner

CLERK

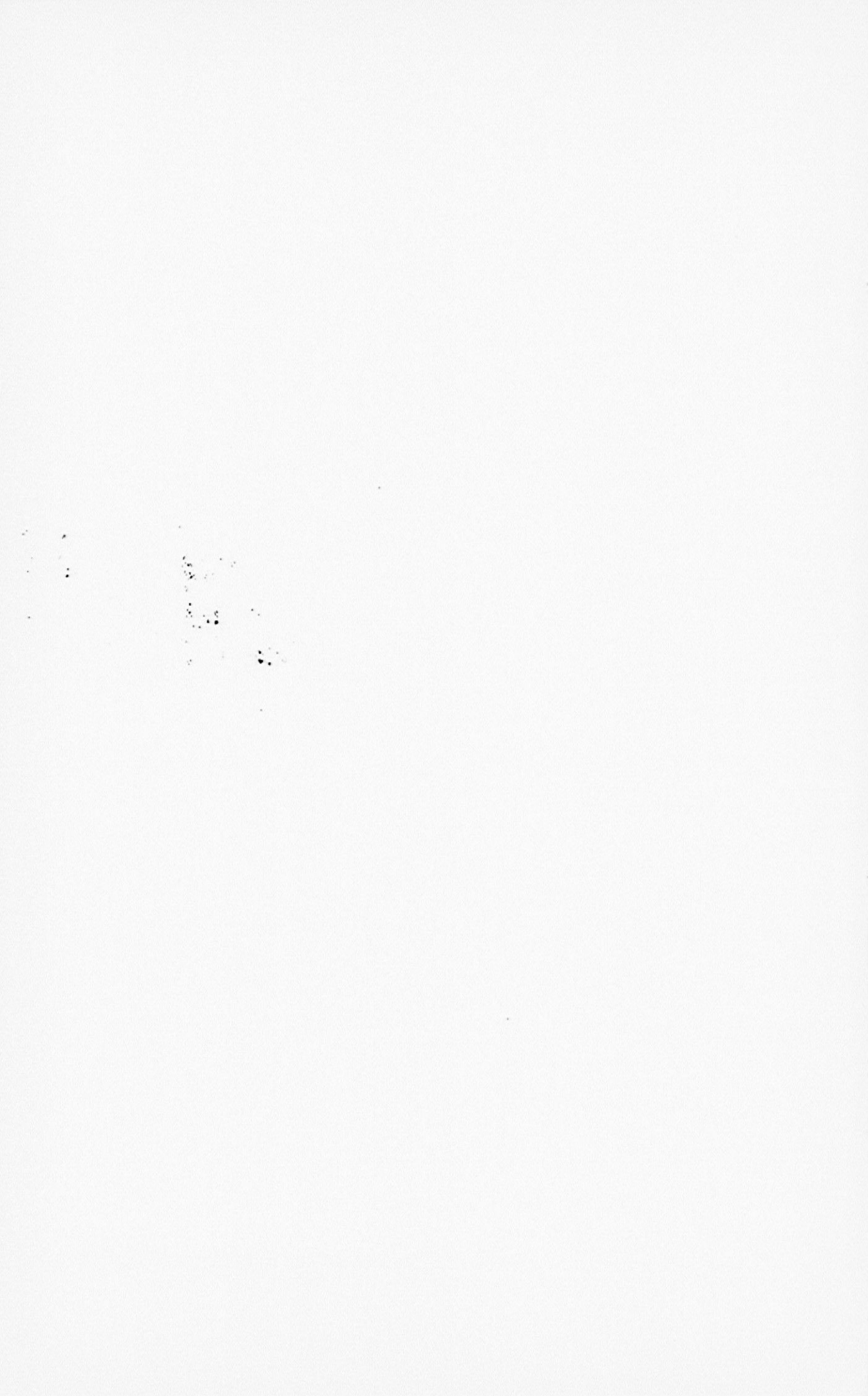
EMMETT R. WARRING, *Appellant,*

v.

RAY L. HUFF, *Appellee.*

Appeal from the District Court of the United States for the
District of Columbia.

MYRON G. EHRLICH,
Attorney for Appellant,
Columbian Building,
Washington, D. C.



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IN THE
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EMMETT R. WARRING, *Appellant*,

v.

RAY L. HUFF, *Appellee*.

Appeal from the District Court of the United States for the
District of Columbia

BRIEF AND APPENDIX FOR APPELLANT

JURISDICTIONAL STATEMENT

The District Court of the United States for the District of Columbia ordered the writ of Habeas Corpus discharged and the appellant remanded to the Custody of the Superintendent of the District of Columbia Penal Institutions (Appellant's App. 8). The writ had been issued and the hearing had under authority of Title 24, section 201, code

of Laws of the District of Columbia (1929); Act of March 3, 1901, (31 Stat. 1372, c. 854, sec. 1143) (R.5) section 6 of Act of February 13, 1925, c. 229, as amended (43 Stat. ~~904~~)⁹⁴⁰; U. S. C. A., Title 28, Sections 451-2.

The jurisdiction of this Court is invoked under section 6 of Act of February 13, 1925, c. 229, as amended (43 Stat. 940); U. S. C. A. Title 28, Section 463.

STATUTES INVOLVED

Section 268 of the Judicial Code, Rev. Stat. 725, Act of Mar. 3, 1911, c. 231 36 Stat. 1163; 28 U. S. C. A. 385.:

The said Courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority. Such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts.

Act of July 15, 1932 (47 Stat. 697, c. 492, section 3); Title 6, sec. 453, Code of Laws of the District of Columbia, (1929) as amended:

“In imposing sentence on a person convicted in the District of Columbia of a felony, the justice or judge of the court imposing such sentence shall sentence the person for a maximum period, not exceeding the maximum fixed by law, and for a minimum period not exceeding one-fifth of the maximum period fixed by law, and any person so convicted and sentenced may be released on parole as herein provided at any time after having served the minimum sentence.”

All Acts or parts of Acts inconsistent with the provisions of sections 451-458 of this title are hereby repealed.

STATEMENT OF CASE

This is an appeal from a judgment (Appellant's App. 8) of the District Court of the United States for the District of Columbia, discharging appellant's writ of habeas corpus (Appellant App. 3, 4), dismissing the petition upon which the writ was issued, and remanding appellant to the custody of the appellee (Appellant's App. 8).

Appellant was convicted of criminal contempt, in criminal contempt cases, numbers 98 and 100 (App. App. 6, 7), in that he violated section 268 of the Judicial Code. Criminal Contempt case Number 98 charged the appellant with causing to be offered a prospective juror certain money with an intent to unlawfully and corruptly influence the juror's decision and verdict in case he, the said juror, should be selected to serve as a juror in the appellant's pending trial. The acts charged were alleged to have occurred some days before the trial, and at places within the District of Columbia, but some miles distant from the Court House.

Criminal Contempt case Number 100 charged appellant with causing to be sent to the Deputy Marshal some quarts of whisky during the deliberation of the jury in a cause in which the appellant was the defendant, and that the Deputy Marshal gave some of the whisky to certain of the jurors during their deliberations, at a building some distance from the Court House. It further charged appellant with causing to be given to the same Deputy certain sums of money for himself.

On February 24, 1939, straight sentences of twenty-six months were imposed upon appellant (Appellant's App. 6) and on May 2, 1939, a further sentence of from three to nine months, was imposed on appellant upon his plea of guilty to a violation of Title 18, Section 88, of the United States Code, to take effect after the expiration of the sentences in Criminal Contempt cases, Numbers 98 and 100 (Appellant's App. 4, 5).

On March 14, 1941, appellant filed in the lower court a petition for writ of habeas corpus, seeking his relief from

custody on the grounds (1) that the Criminal Contempt sentences were void, illegal, and of no force and effect and in contravention of his rights because they were not imposed under the terms of the "Act to Establish a Board of Indeterminate Sentence and Parole for the District of Columbia", *supra.*, (2) that his detention by appellee is illegal and unconstitutional (Appellant's App. 1, 2).

The sentence imposed upon him on May 2, 1939, for violation of Title 18, section 88, United States Code, had already been served, if the Criminal Contempt sentences are void.

On March 18, 1941, the lower court, after hearing dismissed the petition for writ of habeas corpus, discharged the writ, and remanded appellant to the custody of the appellee (Appellant's App. 8). This appeal was thereupon taken (Appellant's App. 8).

STATEMENT OF POINTS

1. Whether sentences for twenty six months imposed on convictions in Criminal Contempt cases in violation of Section 268, Judicial Code, are sentences for felonies or misdemeanors.

2. Whether sentences in Criminal Contempt cases, Numbers 98 and 100, are void because they were not imposed under the terms of the "Act to establish a Board of Indeterminate Sentence and Parole for the District of Columbia."

3. Whether the appellant should have been sentenced under the "Act to establish a Board of Indeterminate Sentence and Parole for the District of Columbia," *supra.*, regardless of whether his convictions and sentences were for felonies, misdemeanors, or neither of them.

SUMMARY OF ARGUMENT

The lower court erred in discharging the writ of habeas corpus, dismissing the petition for writ of habeas corpus, and remanding the appellant to the custody of the appellee,

for the reason that appellant was and is confined in the penitentiary under the alleged authority of void and illegal sentences imposed in Criminal Contempt cases, Numbers 98 and 100 (Appellant's App. 6, 7), and has fully served all valid sentences, imposed upon him.

The alleged sentences in the Criminal Contempt cases imposed upon appellant were not in accordance with the "Indeterminate Sentence Act", *supra*, and were and are void and of no force and effect, because being for more than twelve months each, they should have been imposed under the terms and conditions of that Act. It necessarily follows that the sentence imposed upon appellant to take effect after the sentences in the Criminal Contempt cases had already been served, because it was ordered to take effect after the void sentences, and has been fully complied with by appellant.

The appellant further contends that the Criminal Contempt sentences imposed upon him are void and of no force and effect because his convictions and sentences were for felonies and he was not given "Indeterminate Sentences." The extent of the sentences imposed in the Criminal Contempt cases decided whether the appellant was sentenced for felonies or not.

The appellant further contends he should have been sentenced under the "Indeterminate Sentence Act", *supra*, whether his convictions and sentences were for felonies or otherwise, and the lower court having failed to do so, has forced him to be, and he is confined under void sentences, and the writ of habeas corpus was erroneously discharged.

The intent of Congress as stated in their report for the bill (Report No. 881, 1st session, 72nd Congress) establishing the "Indeterminate Sentence Act", *supra*, clearly shows the "Act" was meant to include sentences for more than twelve months, *for all crimes*.

ARGUMENT

Pretermittting the legality of the convictions, it is contended on behalf of appellant that he is being illegally de-

tained and incarcerated in the penitentiary because the sentences imposed upon him in Criminal Contempt cases, Numbers 98 and 100 (Appellant's App. 6, 7), are nullities in that they were not imposed under terms of the "Act to establish a Board of Indeterminate Sentence and Parole for the District of Columbia".

Sentences which do not comply with the statute under which they must be imposed, are void and of no force and effect.

King v. United States, 69 App. D. C. 10, 98 F. 2d 291.

De Benque v. United States, 66 App. D. C. 36, 85 F. 2d 202.

In attempting to decide whether a sentence for Criminal Contempt under section 268 of the Judicial Code is a conviction of a felony or otherwise, it must be remembered that the statute, *supra*, under which this appellant was convicted and sentenced does not limit the court in the extent of punishment it may impose. It seems to be settled that the extent of punishment for criminal contempt under section 268 of the Judicial Code is discretionary with the Court, but must not be excessive.

As the "Indeterminate Sentence Act", *supra*, uses the term "a person convicted of a felony", it becomes necessary to examine the statutes applicable to sentences in the District of Columbia for the definitions of crimes and felonies, in order to ascertain whether the appellant in this case was convicted and sentenced for felonies.

Section 335 of the Criminal Code (35 Stat. 1152, Act of March 4, 1909, c. 321, sec. 335) as amended December 16, 1930, (46 Stat. 1029 c. 15) provides as follows:

"All offenses which may be punished by death, or imprisonment for a term exceeding one year shall be deemed felonies. All other offenses shall be deemed misdemeanors."

It is obvious that this section included "all offenses"

which are within the jurisdiction of the Federal Courts and the District of Columbia.

It is well established by the Supreme Court of the United States and the Circuit Courts of Appeals that Criminal Contempt is an 'offense' and a 'crime' against the United States.

In *Gompers v. United States*, 233 U. S. 604, the Supreme Court in deciding that the three years limitation prescribed by the Revised Statutes to ordinary crimes applies to criminal contempt cases, used the following language in calling Criminal Contempt an 'offense' and 'crime':

"It is urged in the first place that contempts cannot be crimes, because, although punishable by imprisonment and therefore, if crimes, infamous, they are not within the protection of the Constitution and the amendments giving a right to trial by jury, etc., to persons charged with such crimes. But the provisions of the Constitution are not mathematical formulas having their essence in their form; they are organic living institutions transplanted from English soil. Their significance is vital, not formal; it is to be gathered, not simply by taking the words and a dictionary, but by considering their origin and the line of their growth. (*Robertson v. Baldwin*, 165 U. S. 275, 281, 282) It does not follow that contempts of the class under consideration are not crimes, or rather, in the language of the statute, offenses, because trial by jury, as it has been gradually worked out and fought out, has been thought not to extend to them as a matter of constitutional right. These contempts are infractions of the law visited with punishment as such. *If such acts are not criminal*, we are in error as to the most fundamental characteristic of crimes, as that word has been understood in English speech. So truly are they crimes that it seems to be proved that in the early law they were punished only by the usual criminal procedure (3 Transactions of the Royal Historical Society (N. S.) p. 147, (1885), and that at least in England it seems

that they still may be and preferably are tried in that way."

In *Michaelson v. United States*, 266 U. S. 42, the Supreme Court in deciding the Clayton Act was constitutional, on page 66, stated as follows on this proposition:

"So truly are they crimes that it seems to be proved that in the early law, they were punished only by the usual criminal procedure, and that at least in England, it seems that they still may be, and preferably are, tried in that way. This is also pointed out by counsel in the case of *O'Shea v. O'Shea*, L. R. 15 Prob. Div. 59, 61; and in the course of one of the opinions in that case, it is said (p. 64): 'The offense of the appellant (criminal contempt) is certainly a criminal offense. I do not say that it is an indictable offense, but, whether indictable or not, it is a criminal offense, and it is an offense, and the only offense that I know of, which is punishable at common law by summary process.' The proceeding is not between the parties to the original suit, but between the public and the defendant."

In *Ex Parte Grossman*, 267 U. S. 87, the Supreme Court held that the pardoning power of the President under the Constitution extends to criminal contempts of Court. In deciding that Criminal contempts are offenses against the United States so as to be included in Article 2, sec. 2., clause 1, of the Constitution, which gives the President power to grant reprieves and pardons for offenses against the United States, the Supreme Court said:

"Nothing in the ordinary meaning of the words 'offenses against the United States' excludes criminal contempts. That which violates the dignity and authority of Federal Courts such as an intentional effort to defeat their decrees justifying punishment, violates a law of the United States, and so must be an offense against the United States".

In the case of *United States v. Goldman*, 277 U. S. 229,

the Supreme Court held that informations by the United States for the punishment of criminal contempts are criminal cases within the meaning of the Criminal Appeals Act, and approves the language used by the Court in the *Gompers*, *Grossman*, and *Michaelson* cases, *supra*, to the effect that Criminal Contempts are crimes and offenses. The Court on page 236 used the following language:

“And we think it clear that informations brought by the United States for the punishment of criminal contempts, ** are criminal cases within the meaning of the Criminal Appeals Act, in as real and substantial a sense as ordinary criminal prosecutions for the punishment of crimes.”

The case of *Creekmore v. United States*. 237 Fed. 743, seems to be the leading case on Criminal Contempts in the Circuit Courts of Appeals. In that case there was directly involved the proposition of whether the defendant was guilty of an ‘offense’ in a criminal contempt case, and further whether the lower Court had power to sentence him to the penitentiary for more than a year. The Circuit Court of Appeals decided both of these questions in the affirmative and used the following language in stating why Section 335 of the Criminal Code made a sentence for more than twelve months in a criminal contempt conviction, a felony:

“There is no doubt that the defendant has been proved guilty of a criminal offense.”

“Assuming that criminal contempts are offenses in the meaning of this statute, (sec. 335, Criminal Code) as they are in the holding of the Supreme Court in the *Gompers* case (*supra*) under Revised Statutes, sec. 1044, we must either assume that a defendant may be sentenced to prison for more than a year or that a statute which provides that the defendant may be punished by imprisonment at the discretion of the Court

in some mysterious way means that the discretion is limited to one year, without the thought being expressed. It will be observed that section 335, in defining felonies, said nothing about penitentiaries. *It is the length of possible imprisonment that fixes whether the offense is a felony or misdemeanor.* We see no reason why, under Judicial Code, sec. 268, the Court could not sentence a guilty party for a year and a day, and if it had this power, then section 335 of the Criminal Code made it a felony.

“It seems to be conceded that if the Court could sentence a defendant in a criminal contempt case for more than a year, and if his guilt was an offense under Rev. Stat. sec. 5541, then under that section as amended he could be sentenced to the penitentiary. The Supreme Court has held that a criminal contempt is an offense under R. S. 1044; we see no reason for holding that it is not an ‘offense’ under Criminal Code, sec. 335, and under Rev. Stat. sec 5541.”

The only apparent difference between a Criminal Contempt prosecution and other Criminal cases is that the defendant in the former is not entitled to a trial by jury as a matter of right, unless the criminal Contempt statute under which he may be prosecuted, provides for same.

Gompers v. United States, 233 U. S. 604.

Myers v. United States, 264 U. S. 95.

Michaelson v. United States, 266 U. S. 42.

Ex Parte Grossman, 267 U. S. 87.

United States v. Goldman, 277 U. S. 229.

While many decisions hold that Criminal Contempt proceedings are regarded as *sui generis*, it seems the Courts use that expression in describing them to excuse the failure to give defendant a jury trial, even though Criminal Contempts are considered crimes and offenses, as those terms are known in our Constitution, Laws, and Common Law.

The Supreme Court in *Ex Parte Grossman*, *supra*, stated as follows:

“Contempt proceedings are *sui generis* because they are not hedged about with all the safeguards provided in the Bill of Rights for protecting one accused of ordinary crime from the danger of unjust conviction. This is due, of course, to the fact that for years before the American Constitution, courts have been held to be inherently empowered to protect themselves and the function they perform by summary proceedings without a jury to punish disobedience of their orders and disturbance of their hearings. So it is clear to us that the language of the 5th and 6th Amendments and of other cited parts of the Constitution is not of significance in determining the scope of pardons of ‘offenses against the United States’ in Article 2, sec. 2, clause 1, of the enumerated powers of the President.

Ex Parte Grossman, 267 U. S. 87.

Myers v. United States, 264 U. S. 95.

There is little doubt that Criminal Contempts of the kind for which appellant is incarcerated, are recognized as criminal offenses and crimes within the meaning of those terms in all our laws. There is little doubt that the only real difference between the rights of a defendant in a case of Criminal Contempt and any other Criminal case is his inability to secure a jury trial. The reason for this is quite obvious. As the appellant was sentenced for offenses which the courts recognize as falling within the terms of the statutes describing felonies and incarceration for them, it is respectfully urged that the lower court erred in discharging the writ of habeas corpus, and deciding that the appellant should not have been sentenced under the “Indeterminate Sentence Act.”

In regard to point number three raised by appellant, it appears that the intent of Congress in passing the “In-

determinate Sentence Act," *supra*, was to include all crimes for which a sentence of more than a year could be imposed. While the "Indeterminate Sentence Act" uses the words 'convicted of a felony', it is obvious from reading the Report of the Committee of the District of Columbia, to accompany the bill 'To establish a board of Indeterminate Sentence and Parole for the District of Columbia', that the Congress intended the Act to include all offenses for which the penalty might be more than a year. In the paragraphs setting forth the purpose of the bill, the Report states as follows:

"The object of the proposed legislation is to establish in the District of Columbia a board of indeterminate sentence and parole, with a view to bringing the procedure of the District of Columbia into conformity with the best modern penological practice. The bill provides for the imposition of indeterminate sentences upon persons *found guilty of crimes* within the District. This system is widely used throughout the United States and is generally regarded as an essential factor in penological reform."

As the Courts recognize that Criminal Contempt convictions under section 268 of the Judicial Code are crimes, it does not seem to matter whether the sentences imposed upon appellant were for felonies or not, in order to entitle him to be sentenced under the "Indeterminate Sentence Act."

CONCLUSION

In conclusion, it is respectfully contended that the lower Court erred in discharging the writ of habeas corpus, dismissing the petition for writ of habeas corpus, and remanding the appellant to the custody of the appellee (Appellant's App. 8). The authorities contained in this brief conclusively support the theory that the appellant is being confined in violation of his rights, because he has served all

valid sentences imposed upon him.

All of the cases which have come to the appellant's attention are in accord with his contention that he was sentenced for a felony in the Criminal Contempt cases, because the sentence in each case was for a period of more than a year; that being for more than a year in each case, he was entitled as a matter of law to be sentenced under the terms of the "Indeterminate Sentence Law," *supra*. It is further evident that he was entitled to be sentenced under that "Act" regardless of the characterization of his convictions and sentences.

Wherefore, it is respectfully submitted that the action of the trial Court should be reversed, and the judgment of the lower court be reversed.

Respectfully submitted,

MYRON G. EHRLICH,

Attorney for Appellant,

Columbian Building,

Washington, D. C.

APPENDIX



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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

APRIL TERM, 1941.

No. 7879—Special Calendar

EMMETT R. WARRING, *Appellant*,
v.
RAY L. HUFF, *Appellee*.

Appeal from the District Court of the United States for the
District of Columbia.

APPENDIX TO BRIEF FOR APPELLANT

PLEADINGS, DOCKET ENTRIES AND OTHER
PAPERS DESIGNATED BY APPELLANT

1

PETITION FOR WRIT OF HABEAS CORPUS

Filed March 14
In re: EMMETT R. WARRING
Habeas Corpus No. 2144

The petitioner respectfully represents to the Court as
follows:

1. That he is a citizen of the United States, a resident of the District of Columbia, a member of the Bar of the District of Columbia, and files this petition as attorney for and in behalf of Emmett R. Warring.

2. That Emmett R. Warring is now being held in the custody of the Lorton Reformatory and under the jurisdiction and control of Ray L. Huff, General Superintendent of D. C. Penal Institutions and is being detained at the Lorton Reformatory by the said Ray L. Huff.

3. That the said Emmett R. Warring is being detained at the Lorton Reformatory under the alleged authority of certain sentences imposed on him on February 24, 1939, which sentences are as follows:

Under Criminal Contempt No. 98, Emmett R. Warring was sentenced to serve a term of one year and one month in the penitentiary.

Under Criminal Contempt No. 100, Emmett R. Warring was sentenced to serve a term of one year and one month to take effect at the expiration of the sentence pronounced in Criminal Contempt No. 98.

4. Your petitioner avers that the sentences hereinbefore described and under the alleged authority of which the said Emmett R. Warring is being detained in the Lorton Reformatory are void and illegal and in contravention of his rights because they do not comply with the Code of Laws of the District of Columbia, more particularly Section 453 of Title 6 (1929) of said Code as amended and in violation of the Act of July 15, 1932 (47 Stat. 697).

2 5. Your petitioner avers that the detention of Emmett R. Warring is illegal and unconstitutional.

WHEREFORE, the premises considered, your petitioner prays:

First: That a writ of habeas corpus issue out of this Honorable Court, directed to the General Superintendent of the District Penal Institutions, or to someone acting in his

place and stead, requiring him to produce the body of Emmett R. Warring forthwith, before this Honorable Court.

Second: That a hearing be had to determine the legality of the detention of Emmett R. Warring and that, pending the said hearing, he may be enlarged upon his giving sufficient security for his appearance before this Honorable Court.

Third: That upon a final hearing Emmett R. Warring may be discharged from custody.

Fourth: And for such other and further relief as the nature of the case may require.

MYRON G. EHRLICH.

District of Columbia, ss:

I, Myron G. Ehrlich, being first duly sworn, on oath depose and say: that I have read the foregoing petition by me subscribed and know the contents thereof; that the matters and things therein stated as of my own knowledge are true and those stated upon information and belief I believe to be true.

MYRON G. EHRLICH.

Subscribed and sworn to before me this 14th day of March, 1941.

J. BERNARD FLAHERTY

(SEAL)

Notary Public, D. C.

Let this writ issue, returnable March 18th, 1941 at 10 a. m.

T. ALAN GOLDSBOROUGH

Justice

THE PRESIDENT OF THE UNITED STATES OF AMERICA

3 To Ray L. Huff

Greeting

YOU ARE HEREBY COMMANDED, that the body of Emmett R. Warring by you restrained of his liberty, as it

is said detained by whatsoever names the said Emmett R. Warring may be detained, together with the day and cause of his being taken and detained, you have before the Honorable T. ALAN GOLDSBOROUGH, Judge of the United States District Court in and for the District of Columbia at the court room of said Court, in the City of Washington March 18, 1941 at 10 A. M., then and there to do, submit to and receive whatsoever the said Judge shall then and there consider in that behalf; and have you then and there this writ.

WITNESS the Honorable Chief Justice United States District Judge at Washington, D. C.

(SEAL)

United States District Judge at
Washington, D. C. this 14th day of
March, A. D. 1941

CHARLES E. STEWART,
Clerk.

By H. B. DERTZBAUGH,
Deputy Clerk.

UNITED STATES MARSHAL'S RETURN

4 Received the within writ the 14th. day of March, 1941 and executed same. Ray L. Huff, by serving George Ratherdale, Captain at the D. C. Jail, PERSONALLY, March 15, 1941

JOHN B. COLPOYS
U. S. Marshal
By E. J. GRAVES
Deputy Marshal

RESPONDENT'S ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS AND RETURN TO WRIT OF HABEAS CORPUS ISSUED HEREIN

5. Comes now the respondent, Ray L. Huff, General

Superintendent, District Penal Institutions, and for answer to the petition for writ of habeas corpus filed herein and for return to the writ of habeas corpus issued herein, states to the Court as follows:

1. Respondent admits the allegations of Paragraphs 1 and 2 of the petition.

3. Respondent, for answer to Paragraph 3 of the petition, states that the averments thereof do not set forth all of the sentences which the petitioner was committed on pursuant to convictions or pleas of guilty and sentences and judgments of this Honorable Court made pursuant thereto.

In this connection, the respondent states that the petitioner was found guilty of four charges of criminal contempt on February 24, 1939, said cases being numbered Criminal Contempt Nos. 98, 99, 100, and 101. In Criminal Contempt Case No. 98, the petitioner was sentenced to one year and one month. In Criminal Contempt Case No. 99, the petitioner was sentenced to six months, to run concurrently with the sentence imposed in Criminal Contempt Case No. 98. In Criminal Contempt Case No. 100, the petitioner was sentenced to one year and one month, to take effect at the expiration of the sentence imposed in Criminal Contempt Case No. 98. In Criminal Contempt Case No. 101, the petitioner was sentenced to six months, to run concurrently with the sentence imposed in Criminal Contempt Case No. 98.

Respondent states that the petitioner is incarcerated at Lorton pursuant to commitments issued in the above-mentioned contempt cases. Respondent also avers that on the second day of May, 1939, the petitioner pleaded guilty to an indictment charging violation of Title 18, Section 88 of the

United States Code, and was given a sentence of
6 from three months to nine months, to take effect at
the expiration of the sentence imposed in Criminal
Contempt Case No. 100.

4. Respondent denies the allegations and averments of Paragraphs 4 and 5 of the petition.

WHEREFORE, having fully answered, respondent prays that the petition for writ of habeas corpus may be denied and dismissed, that the writ of habeas corpus issued herein be discharged, and that the petitioner be ordered by this Honorable Court to be remanded to the respondent to serve out the sentences imposed as aforementioned.

RAY L. HUFF,
General Superintendent, District Penal
Institutions.

District of Columbia, ss:

I, Ray L. Huff, being first duly sworn on oath, depose and say:

That I am General Superintendent, District Penal Institutions; that I have read the foregoing answer and return by me subscribed, and know the contents thereof, and verily believe the matters and things therein stated to be true.

RAY L. HUFF

Subscribed and sworn to before me this 17th day of March, 1941.

LILLIAN A. TRAMMEL
(SEAL) Notary Public, D. C.

7 SENTENCES IN CRIMINAL CONTEMPT CASES
NO. 98 AND 100

Friday, Feb. 24 A. D. 1939

The Court resumes its session Pursuant to Adjournment: Mr. Justice LAWS, Presiding

IN RE: EMMETT R. WARRING

Criminal Contempt No. 98

Come as well the Attorney of the United States, as the respondent in proper person, according to his recognizance, and by his attorney F. Joseph Donohue, Esquire; whereupon the said respondent having heretofore pleaded

Guilty to Contempt of Court, it is demanded of the said respondent what further he has to say why the sentence of the law should not be pronounced against him and he says nothing except as he has already said; and thereupon it is considered by the Court that for his said offense the said respondent be taken by the Superintendent of the Washington Asylum and Jail, to the Washington Asylum and Jail, thence to the Penitentiary, as designated by the Attorney General of the United States, there to be imprisoned for the period of One (1) year and One (1) month.

IN RE: EMMETT R. WARRING

Criminal Contempt No. 100

Come as well the Attorney of the United States, as the respondent and proper person, according to his recognizance, and by his attorney F. Joseph Donohue, Esquire; whereupon the said respondent having heretofore pleaded Guilty to Contempt of Court, it is demanded of the said
 8 respondent what further he has to say why the sentence of the law should not be pronounced against him and he says nothing except as he has already said; and thereupon it is considered by the court that for his said offense the said respondent be taken by the Superintendent of the Washington Asylum and Jail, to the Washington Asylum and Jail, thence to the Penitentiary, as designated by the Attorney General of the United States, there to be imprisoned for the period of One (1) year and One (1) month, said sentence to take effect at the expiration of the sentence pronounced in Criminal Contempt No. 98.

ORDER DENYING PETITION, DISCHARGING
 WRIT, AND DEMANDING PETITIONER

Filed March 18, 1941

In re EMMETT R. WARRING, *Petitioner*.

Habeas Corpus No. 2144

9 This cause having come on to be heard upon the petition for writ of habeas corpus filed herein and upon the writ of habeas corpus issued herein, and upon the respondent's answer to said petition and return to said writ, and the same having been argued by counsel and considered by the Court, it is this day of March, 1941,

ORDERED and DECREED, That the petition for writ of habeas corpus be, and the same hereby is, dismissed; that the writ of habeas corpus issued herein be, and the same hereby is, discharged; and that the petitioner be, and hereby is, remanded to the custody of the respondent, Ray L. Huff, General Superintendent, District Penal Institutions.

F. DICKINSON LETTS

Justice

COURT'S STATEMENT

10

Filed March 26, 1941

The Court: I have had in past years had occasion to examine into this precise question, and I have come to the conclusion that the straight sentence is the only possible sentence that can be resorted to as a punishment for criminal contempt.

For me now to take a contrary view would be in conflict with my judicial acts in the past. After I have heard these cases read, they are the same ones I have looked into and conjured with; so, the petition must fail. The writ will be discharged and the petition dismissed.

Mr. Ehrlich: Your Honor, we note an exception.

NOTICE OF APPEAL

11

Filed March 24, 1941

Notice is hereby given this 22 day of March, 1941, that Emmett R. Warring hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court on the 18 day of March, 1941 in favor of Roy L. Huff against said Emmett R. Warring.

MYRON G. EHRLICH

Attorney for Emmett R. Warring

MEMORANDUM

March 25, 1941

Undertaking on appeal \$100.00 approved and filed.

